IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.1396/2003

Dr. Devi Singh and another
V/s
Ambikesh Sharma and another

Date of Order : 10th October, 2006

HON'BLE MR.R.S. CHAUHAN, J.

Dr.P.C. Jain, for the appellants.
Mr.Sudesh Banswal with Mr.Rishi Parashar
for the respondents.

By Court:

The appellant-defendants are challenging the order dated 31.03.2003, whereby the Additional District Judge, No.5, Jaipur City, Jaipur has determined the provisional rent to be Rs.17,680/- as the rent due from Sept., 2001 to 28th Feb., 2003 and includes 6% interest to be paid on the principal amount. The appellants were also directed to deposit Rs.1,000/- per month for the rented premises.

The brief facts of the case are that

respondent No.1 had filed a suit for possession of the premises situated at Plot No.B-36, Sethi Nagar, Sethi Colony, Jaipur and in the alternative for eviction of the appellants from the said premises. The respondent No.1 as the plaintiff pleaded that he had purchased the said premises from one Shri Bhagwan Dayal Saxena through a registered sale deed dated 07.06.1997. The said sale deed was subsequently registered with the Sub-Registrar on 12.06.1997. It was further alleged that the appellants had trespassed into the said premises on 06.12.1996 by breaking open the lock while the premises were under the possession of the previous owner, namely Bhagwan Dayal Saxena. Shri Bhagan Dayal Saxena had reported the trespass to the police. However, after the property was bought by the respondents, the appellants styled themselves as the tenant of the said premises and deposited the rent in favour of the respondent No.1 by filing an application under Section 19A of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (henceforth to be referred to as 'the Act of 1950', for short). While the suit was for possession, in the alternative, the respondent No.1 had also prayed that in case, the learned trial

court comes to the conclusion that the appellant is a tenant, then the appellant be directed to vacate the said premises. The respondent No.1 had sought the eviction on the ground of bona fide necessity and on the ground of default in payment of the rent. Hence, the respondent No.1 pressed his cause for determination of rent under section 13(3) of the Act of 1950. After hearing both the parties, the learned court determined the rent of the suit premises at Rs.1,000/- per month from Oct., 2001 to 28.02.2003. It was further directed that rent deposited by the appellant under Section 19A can be taken by the respondent No.1. Hence, this appeal before this Court by the appellant-tenant.

Dr. P.C. Jain, the learned counsel for the appellants, has contended that the appellants happened to be tenant of the erstwhile owner Shri Bhagwan Dayal Saxena. Shri Bhagwan Dayal Saxena had sold the property to one Shri Kamalchand Agarwal and Prahlad Singh vide agreement to sell dated 29.10.1996. On the date of the said sale, the appellant was the tenant of Mr. Saxena. Subsequently, it seems that the said premises were sold by Mr. Saxena to the respondent No.1 and the respondent

No.2 allegedly through a sale deed dated 12.06.1997. Initially, the appellant paid the rent to the respondent No.1 and subsequently, deposited the rent amount under Section 19A of the Act of 1950 in the court. However, later on, the appellant received a notice from Shri Kamalchand Agarwal and Prahlad Singh stating therein that they have bought the property from Mr. Saxena on 29.10.1996. Therefore, the appellant stopped the payment of the rent to the respondent No.1 and handed over the possession of the property in dispute to Kamalchand Agarwal and Prahlad Singh. Thus, according to the appellant, he is no longer in possession of the property in dispute and is no longer in the capacity of the tenant of the respondent No.1. Therefore, he cannot be saddled with the liability of paying the provisional rent. Moreover, since he is no longer in the capacity of the tenant, the question of provisional rent does not even arise.

On the other hand, Mr. Sudesh Bansal with Mr. Rishi Parashar, the learned counsels for the respondents, have argued that till 1998, the appellant paid the rent to the respondent No.1. Hence, he has

impliedly admitted that he is living in the capacity of the tenant of respondent No.1. Secondly, that neither Kamalchand Agarwal nor Prahlad Singh have been arrayed as a party. Therefore, their statement that they have handed over the possession to these two gentlemen is absolutely baseless. Thirdly, the possession even today is that of the appellant. Therefore, he is liable to pay the provisional rent as determined by the trial court. Fourthly, that it is a matter of evidence whether the appellant had handed over the possession to Kamalchand Agarwal and Prahlad Singh; whether the appellant is in possession of the property in dispute or not? Such issues can only be decided by the learned trial court after discussing the entire evidence produced during the trial. Lastly, even if a provisional rent has been determined or has been paid, same can be adjusted at the time of final determination of the case. Therefore, the appellants' interest are not adversely affected by the payment of provisional rent. After all, the appellant No.2, herself has stated in the application under Section 19A of the Act of 1950 that he is the tenant of respondent No.1 and is paying a rent of Rs.1,000/- per month. Hence, she is bound by

her admission. They have, therefore, supported the impugned Order.

We have heard both the learned counsels for the parities and have perused the impugned Order.

The mere fact that the suit has been filed for possession and in the alternative for eviction of the appellant from the premises in dispute, is not fatal to the maintainability of the suit. For, the plaintiff is permitted to pray for alternative reliefs. In the instant case, the two reliefs prayed for are neither contradictory to each other nor exclusive to each other. It is for the trial court to adjudicate, after considering all the evidence available on record, whether the prayer for possession and or the prayer for eviction shall be granted or not?

The contention raised by the appellant that he has handed over the possession of the disputed property to Kamalchand Agarwal and Prahlad Singh on 21.09.2002 can be decided only after going through the entire gamut of evidence produced during the trial. At the

initial stage of determining the provisional rent, the trial court is not expected to go into and to decide this issue. After all, at the interim stage, the trial court does not hold a mini- trial. The veracity and validity of the document produced by the appellant showing handing over the possession to Kamalchand Agarwal and Prahlad Singh can be determined only at the final stage of the trial. The uncontroverted facts are that according to the appellant No.2, who is wife of the appellant No.1, they were the tenant of the erstwhile owner Mr. Bhagwan Dayal Saxena. They were paying a rent of Rs.1,000/- per month to Mr. Saxena. The respondents had bought the property through a registered sale deed dated 22.06.1997. Subsequently, the appellant had moved an application under Section 19A of the Act of 1950 for being permitted to deposit the rent in the court in favour of the respondent No.1. Till Sept., 2001, the said rental amount was deposited by the appellant in favour of the respondent Nos. 1 and 2. The appellant stopped the payment of rental amount of Rs.1,000/- only after Sept., 2001. The stand taken by the appellant is that he had handed over the possession of the property in dispute to Mr. Kamalchand

Agarwal and Mr. Prahlad Singh, who allegedly bought the property in dispute through the agreement to sell dated 29.10.1996. The issues whether the said defence is a valid defence or not, the issue whether the possession had been handed over by the appellant to Mr. Kamalchand Agarwal and Mr. Prahlad Singh or not, the issue whether the appellant has defaulted in payment of rent from Sept., 2001 till present or not, these issues can only be decided by the trial court after considering the entire evidence produced during the trial. But considering the prima facie case in favour of the respondent No.1, considering the admission by the appellants that they are/were the tenant of the respondent No.1, the learned Judge has rightly decided the case in favour of the respondent Nos. 1 and 2. The provisional rent determined by the learned Judge is Rs.1,000/- per month the same rental amount claimed by the appellant to be payable to the respondents No. 1 and 2 in the application filed by them under Section 19A of the Act of 1950. Therefore, there is nothing illegal about the impugned order.

In the result, this appeal has no force. It

is, hereby, dismissed.

(R.S. CHAUHAN), J.

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